

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

UNITED STATES OF AMERICA

vs.

KIZZIE WATKINS ANDERSON,

Defendant.

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CRIMINAL ACTION NO. 08-00361-KD

ORDER

This action is before the Court on defendant's motion to withdraw guilty plea (doc. 37) and the response filed by the United States (doc. 39). Defendant moves the Court to allow her to withdraw her plea of guilty to Count One of the Indictment wherein she is charged with conspiracy to possess with intent to distribute hydrocodone, a Schedule II controlled substance, in violation of 21 U.S.C. § 846. The United States does not object to the motion to withdraw.

As grounds for the motion, defendant sets forth that when she entered her plea of guilty to Count One, the parties were not aware that the controlled substance involved, Lortab (a prescription medication containing hydrocodone and acetaminophen), was a Schedule III controlled substance but not a Schedule II controlled substance as charged in the Indictment. Defendant argues that there is no factual basis for a plea to conspiracy to possess with intent to distribute a "Schedule II" controlled substance and she should be allowed to withdraw her plea.

Upon consideration, the Court finds that defendant has shown a "fair and just reason" for the withdrawal of her guilty plea. See Fed.R.Crim.P. 11(d)(2)(B) ("A defendant may withdraw a plea of guilty . . . [if] the defendant can show a fair and just reason for requesting the withdrawal."). Therefore, the motion to withdraw guilty plea is **GRANTED**.

DONE and **ORDERED** this 7th day of May, 2010.

s/ Kristi K. DuBose
KRISTI K. DuBOSE
UNITED STATES DISTRICT JUDGE